

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

APR 27 2001

OFFICE OF
MANAGING DIRECTOR

Jose A. Martinez
V.P., General Manager
Station WUPR-AM
Central Broadcasting Corporation
P.O. Box 868
Utuado, Puerto Rico 00761

86-285

Re: Central Broadcasting Corporation
Station WUPR-AM
Fee Control No. 9909228835061011

Dear Mr. Martinez:

This is in response to your request filed on behalf of Central Broadcasting Corporation for a reduction of the 1999 regulatory fee paid by Station WUPR-AM. You request that the regulatory fee be reduced to take into account the station's disproportionate share of the regulatory fee increase established in the *Assessment and Collection of Regulatory Fees for Fiscal Year 1999, Report and Order*, FCC 99-146 (adopted: June 11, 1999, released: June 18, 1999).

You maintain that, due to several factors unique to Puerto Rico, small rural stations on the island (such as Station WUPR-AM) bear a significantly greater share of the 1999 regulatory fee increase than large metropolitan stations. Specifically, you state that because of the difficulty of sustaining good quality broadcast signals over Puerto Rico's rugged terrain, the Commission has authorized the use of more powerful transmitters and antennas than would otherwise be permitted for similarly classified radio stations on the U.S. mainland (*citing* 47 C.F.R. §73.211). You state that for the same reason, the Commission has adopted special short spacing rules allowing the construction of a greater number of stations in a smaller area than would otherwise be permitted for similarly classified radio stations on the U.S. mainland (*citing* 47 C.F.R. §73.215). You maintain that although these more powerful transmitters and antenna stations produce a larger area of coverage, the short spacing rules create significant congestion and contour overlap in the radio market (particularly in the rural areas) that results in a technically unreachable (albeit theoretically larger) population base. You therefore argue that because the Commission's regulatory fee scheme is based on the population served by the radio station (as well as on the station class), small Puerto Rican radio stations such as WUPR-AM pay disproportionately higher regulatory fees for providing service to a technically unreachable population base. You further claim that because of Puerto Rico's depressed economy, the regulatory fee will cause Station WUPR-AM to suffer severe financial strain.

The Commission may waive, reduce, or defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby. *See* 47 U.S.C. §159(d); 47 C.F.R. §1.1166; *see also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *on recon.*, *Memorandum Opinion and Order*, 10 FCC Rcd 12,759, para. 12 (1995) (regulatory fees may be waived, deferred, or reduced on a case-by-case basis in extraordinary and compelling circumstances upon a clear showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs). The Commission will waive, reduce or defer its regulatory fees in those instances where a petitioner presents a compelling case of financial hardship. *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *on recon.*, 10 FCC Rcd 12759 (1995). Regulatees can establish financial hardship by submitting:

[I]nformation such as a balance sheet and profit and loss statement (audited, if available), a cash flow projection . . . (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. 10 FCC Rcd at 12761-12762.

You have submitted no information to support your claim that Station WUPR-AM is unable to provide service to the population within its protected service area or to support your claim of financial hardship. In the absence of such documentation, we find that you have failed to make a compelling showing that the public interest would be served by a reduction of WUPR-AM's 1999 fiscal year regulatory fees on these bases.

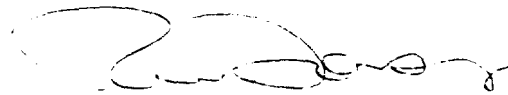
You also maintain that Puerto Rico has a predominantly rural population served primarily by small, privately-owned radio stations. You assert that although a station's signal from one market in Puerto Rico might reach the population center of another market, the station might not be able to sell advertising in that other market. We note that regulatory fees are not assessed on radio stations based on their advertising, but are based on the station class and the city grade contour population data. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1999, Report and Order*, FCC 99-146 (adopted: June 11, 1999, released: June 18, 1999), Attachment F, at para. 18 (*1999 Regulatory Fee Order*). We therefore reject your request for reduction on this basis.

You further assert (without explanation or support) that station WUPR-AM should be classified as a Class C (as opposed to a Class B) station. In the *1999 Regulatory Fee Order*, the Commission acknowledged that "certain stations operating in Puerto Rico . . . have been assigned a higher level station class than would be expected if the station were located on the mainland." *1999 Regulatory Fee Order* at n.179. The Commission

explained that “[a]lthough this results in a higher regulatory fee, . . . the increased interference protection associated with the higher station class is necessary and justifies the fee.” *Id.* In light of the Commission’s explanation justifying the higher station classification in the *1999 Regulatory Fee Order* and your failure to provide any justification for your assertion that that WUPR-AM should be reclassified as a Class C station, we find that reclassification is not warranted under the circumstances.

We therefore find no basis to support your request for a reduction of Station WUPR-AM’s 1999 regulatory fees and we deny your request. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Reger", with a stylized flourish at the end.

 Mark Reger
Chief Financial Officer